

**Article I.
Supreme Court Rules of Appellate Procedure**

Provisional Rule A

Mediation Conference Procedures

A(1.) Purpose of the Rule. The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court Office of Mediation and with the help of designated mediators.

A(2.) Eligibility. All civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions:

- a.) Applications for post-conviction relief;
- b.) Petitions for habeas corpus;
- c.) Cases brought by prisoners in the custody of the Department of Corrections;
- d.) Cases in which one or more parties are not represented by counsel (unless specifically included by order of a mediation justice);
- e.) Appeals from the Family Court involving termination of parental rights;
- f.) Juvenile cases;
- g.) Appeals from the Family Court in which child custody is the sole or primary issue;

- h.) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Mediation Program by order of the Court at the time the prerogative writ is issued;
- i.) Criminal cases will not be included in the Mediation Program. Criminal cases will also be construed to include cases on review from traffic tribunals of the state or municipalities, or adjudication of offenses by municipal courts, however designated.

The Appellate Screening Unit shall use its discretion in determining the assignment of civil cases that meet the requirements for eligibility.

A(3.) Mediators. Mediators will be designated retired justices of the Supreme Court or other persons who may from time to time be designated by the Chief Justice. Such persons may be retired justices or judges of trial courts or other judges as designated by the Chief Justice in a particular proceeding.

A(4.) Modifications of Procedures Relating to Cases Eligible for Mediation. Within 10 days of filing a notice of appeal, the appellant(s) shall complete a mediation statement on a form provided by the Clerk of the Superior Court or Family Court to be filed with the Appellate Screening Unit. Within 10 days of filing of the appellant's mediation statement, the appellee(s) shall file a responsive mediation statement on a form provided by the Clerk of the Superior Court or Family Court with the Appellate Screening Unit.

The mediation eligibility portion of the form (Part I) will include the procedural history of the case, including the type of judgment entered, the amount of any monetary judgment and/or injunctive relief, the history of negotiation, including any demand(s) that

have been transmitted by the plaintiff(s), as well as any counteroffer(s) that have been made by the defendant(s). Counsel for the plaintiff(s) or other claimant(s) will include a list of out-of-pocket expenses upon which the claim(s) for compensation is based in whole or in part, as well as a description of physical and other injuries upon which the claim(s) for compensation is based. A copy of the mediation eligibility portion of the form must be provided to the Appellate Screening Unit and to all opposing counsel.

If the case is eligible for mediation, the parties shall also include a confidential mediation statement (Part II) with the mediation eligibility form to be filed with the Appellate Screening Unit. The confidential mediation statement shall include significant factors that could affect the party's chances of prevailing on appeal, a description of why past efforts at negotiation have failed, the priorities of the parties and possible acceptable outcomes to the mediation process. The statement should be sufficiently detailed to enable the mediator-justice to determine the areas of agreement and disagreement and to consider any other relevant information that would assist the mediator in the resolution of the dispute. To maintain the confidentiality of the mediation process, the confidential mediation statement shall be sent only to the Appellate Screening Unit and shall not be provided to opposing counsel.

As a condition for participation in mediation, the parties shall include a statement that counsel has been authorized to negotiate on behalf of the client(s), with full authority to make and/or accept offers. If counsel is not so authorized, arrangements must be made to have the client(s) or authorized representative(s) available in the courthouse, or available for consultation by telephone, at the time of the mediation conference. At any

time during the mediation process, the mediator-justice may request the record be transferred for reference at his or her discretion.

In the event that the judgment has not included all parties or all claims for relief, a judgment will be entered in the trial court pursuant to Rule 54(b).

A(5.). Ordering of Transcript and Filing of Briefs. In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and referred to mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal. This extension may be modified by special order issued by the mediator-justice or any other justice of the Supreme Court. After the mediation conference, the mediator-justice shall make such order as may be appropriate in respect to the ordering of the transcript and the filing of briefs or memoranda in the event that the case is not settled. The full record of the case shall then be filed in the office of the Clerk of the Supreme Court.

A(6.) Mediation Conference. At the time of the mediation conference, counsel for the parties should have had a prior meeting with their clients and opposing parties in order to seek as much agreement on issues, including settlement issues as possible. Counsel should have obtained authority from the client(s) to make demands and counteroffer(s) to the fullest extent possible. Client(s) and/or representatives of client(s) should be available at the courthouse or by telephone in order to furnish additional authority that may be required in order to achieve a successful mediation in the course of the meeting.

A(7.) Confidentiality. All documents filed, and statements made in furtherance of mediation, including, but not limited to, the history of negotiation, listing of out-of-

pocket expenses, injuries, responses by the defendant(s), counteroffers, and memoranda relating to the narrowing of issues, will be confidential. The only portion of the mediation process that will be public is the fact that the conference took place and that the case has been settled, if such a result is reached.

A(8.) Sanctions. A party or counsel for a party who fails to participate in a mediation conference after notice, or who fails to provide the necessary preliminary documents and other information required for a meaningful mediation conference, or fails to keep confidential any mediation statements or documents, or otherwise fails to follow the provisions of this Order, may be subject to sanctions to be imposed after hearing by the mediator-justice. Such sanctions may include counsel fees or orders that may deny or grant relief to appellant(s) or to appellees(s) as circumstances and justice may require.

A(9.) Effective Date. This provisional rule shall become effective October 1, 2003, and any rule inconsistent with this provisional rule shall be superseded hereby.

Entered as an Order of this Court this day of July, 2003.

ENTER:

Frank J. Williams, Chief Justice

Robert G. Flanders, Jr., Justice

Maureen McKenna Goldberg, Justice

Francis X. Flaherty, Justice

Paul A. Suttell, Justice

Per Order,

Clerk